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18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION**

20 IN RE: YAHOO! INC. CUSTOMER DATA) No. 16-md-02752-LHK
21 SECURITY BREACH LITIGATION) **DECLARATION OF KAREN HANSON**
22) **RIEBEL IN SUPPORT OF PLAINTIFFS'**
23) **MOTION TO COMPEL DISCOVERY**
24)
25)
26)
27)
28)
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1 I, Karen Hanson Riebel, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of
3 Minnesota and am admitted *pro hac vice* in this Court. I am a partner with Lockridge Grindal
4 Nauen P.L.L.P. (“LGN” or the “Firm”), and I was appointed by the Court to the Plaintiffs’
5 Executive Committee in this matter. I am also counsel for plaintiff Adam Savett in *Savett v.*
6 *Yahoo! Inc.*, Case No. 5:16-cv-06152 (N.D. Cal.) (the “*Savett Action*”).

7 2. This Declaration is being submitted in support of the Plaintiffs’ Motion to Compel
8 Discovery. I have personal knowledge of the matter stated herein and, if called upon to do so,
9 could and would testify competently thereto. I make this declaration pursuant to 28 U.S.C. § 1746.

10 3. There are five privilege logs produced by Defendant Yahoo! Inc. (“Yahoo”) at issue
11 in the instant motion, each of which is currently governing version of that log. First, there is a
12 First Amended Revised Log, served April 23, 2018, and containing 3,819 entries (revised twice
13 by Yahoo). Second, there is a Second Log, served January 22, 2018, and containing 53,524 entries
14 (only version served by Yahoo). Third, there is a Third Amended Revised Log, served July 27,
15 2018, and containing 1,374 entries (revised twice by Yahoo). Fourth, there is a Fourth Amended
16 Log, served July 27, 2018, and containing 16,719 entries (revised once by Yahoo). Fifth and
17 finally, there is a Fifth Amended Log, served July 27, 2018, and containing 1,749 entries (revised
18 once by Yahoo). These are the currently governing logs as far as I am aware, duly served on
19 Plaintiffs by Yahoo. Collectively, the five logs contain 77,185 entries, and 76,909 log documents
20 that have not been produced in any form by Yahoo to Plaintiffs. The First Amended Revised,
21 Second, and Fourth Amended Logs contain entries related to productions to the SEC, while the
22 Third Amended Revised and Fifth Amended Logs contain entries related to documents produced
23 based on the search terms negotiated by the parties.

24 4. Yahoo produced its privilege logs in Excel Spreadsheet form, and paralegals at my
25 office have used those spreadsheets to run statistics used by Plaintiffs herein and in our Points and
26 Authorities. Those statistics are predicated on the entries produced by Yahoo and represent our
27 best effort to analyze them in the context of specific entries. Based on these Excel spreadsheets, I
28 and my co-counsel Kate Baxter-Kauf have compiled a spreadsheet that includes 500 illustrative

1 privilege log entries as requested by the Court. ECF No. 268. That spreadsheet is attached to this
2 Declaration as Exhibit 1. The redacted version of Exhibit 1 is attached to this declaration pursuant
3 to the Joint Administrative Motion to Seal filed at ECF No. 275. Exhibit 1 includes selections from
4 all five operative privilege logs, including all columns included and produced by Yahoo. We
5 added two columns. First, we added a new left side column that identifies the privilege log from
6 which the entry was drawn by number. Second, we added a new right side column that adds
7 annotations for Categories A-D identified in the brief as four facial deficiencies discussed by
8 Plaintiffs. In compiling the spreadsheet, we identified only one category for each of the exemplar
9 entries to make it possible to sort the spreadsheet and to minimize confusion, but many of the
10 entries have multiple facial deficiencies and might have properly been assigned to additional
11 categories.

12 5. Yahoo began producing privilege logs in November 2017. Specifically, Yahoo
13 produced a first privilege log, and an accompanying legal names list, on November 15, 2017.
14 Immediately before and after that production, Plaintiffs pointed out several deficiencies in the log
15 as produced via email exchanges between myself, my co-counsel Henry Kelson, and Yahoo
16 attorneys Corey Lee and John Delinado. As a result, Yahoo agreed to include several additional
17 fields and additional information on its privilege logs going forward.

18 6. Yahoo served an amended first log on December 15, 2017. During this time, the
19 parties continued to meet and confer via email, and submitted a case management order outlining
20 progress on December 29, 2017. On January 4, 2018, the Honorable Lucy H. Koh held a case
21 management conference and issued an Order thereafter setting a deadline for Yahoo to provide a
22 privilege log to Plaintiffs by January 26, 2018. As a result of that order, and in conjunction with
23 ongoing discussions, Yahoo served two additional logs in January 2018. On January 22, 2018,
24 Yahoo served its Second Privilege Log, and then served its Third Privilege Log on January 26,
25 2018. The Second Log produced on January 22, 2018, is the only and governing version of that
26 log produced by Yahoo. The Second Log's 53,524 entries comprise almost 70% of the entries and
27 documents withheld by Yahoo.

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1 7. On February 7, 2018, I sent a letter to Yahoo Counsel Ann Marie Mortimer
2 outlining facial and other deficiencies with the three served logs. A true and correct copy of that
3 letter is attached to this Declaration as Exhibit 2. As part of that letter, I and my co-counsel
4 conducted an extensive, entry-by-entry review of the amended version of Yahoo's First Log.
5 Despite receiving no response from Yahoo, I sent an additional letter to Ms. Mortimer on February
6 22, 2018, noting that the facial deficiencies identified on the First and Second Logs also applied
7 to the Third. A true and correct copy of that letter is attached to this Declaration as Exhibit 3. My
8 February 22 letter also attached an annotated version of the Third Log, detailing deficiencies on
9 an entry-by-entry basis.

10 8. Mr. Lee responded to Plaintiffs' letters on March 5, 2018. A true and correct copy
11 of that letter is attached to this Declaration as Exhibit 4. On March 7, 2018, Yahoo also served its
12 Fourth Privilege Log and its Fifth Privilege Log. After these five logs had been served, the parties
13 met and conferred via telephone on March 15, 2018. During this call, the parties discussed the
14 scope of the logs that contained entries related to productions to the SEC (the First Amended Log,
15 the Second Log, and the Fourth Log), the continued missing fields and vague descriptions
16 (including any author information whatsoever for many entries), and Plaintiffs' assertion of the
17 crime fraud exception, among other topics.

18 9. On April 9, 2018, I responded to Mr. Lee via letter. A true and correct copy of that
19 letter is attached to this Declaration as Exhibit 5. In addition to raising other substantive concerns,
20 the letter noted continued missing fields in the privilege logs, vague descriptions, and a lack of
21 attorney information on the logs. Mr. Lee responded via letter on April 19, 2018. A true and
22 correct copy of that letter is attached to this Declaration as Exhibit 6. In that letter, Mr. Lee stated
23 that Yahoo was "in the process of taking reasonable steps to ensure that the data has been provided
24 for all metadata fields (where available) that it has agreed to provide" and were "in the process of
25 amending some of its privilege descriptions." Mr. Lee also stated in the same letter that it was "in
26 the process of re-reviewing some documents that were withheld from SEC productions" but
27 planned "to produce documents that have been down coded from privilege before May." Mr. Lee
28

1 also said Yahoo would provide “amended logs on a rolling basis, and plan[ned] to deliver the
 2 Amended log by April 24, 2018.”

3 10. On April 23, 2018, Yahoo produced a Revised First Amended Log, which is the
 4 most current and controlling version of the First Log. The log contained 3,819 entries, having
 5 removed a single entry from the First Amended Log. Yahoo also revised 175 entries, and provided
 6 an updated legal names list. The revision of 175 entries did not result in complete author or
 7 information in other fields. That same day, Yahoo’s counsel and I, along with co-counsel, met
 8 and conferred via telephone. During that conference, among other substantive discussions, Yahoo
 9 again agreed to re-review certain documents, such as those missing author fields.

10 11. Yahoo provided no additional logs in April, May, or June 2018. I sent a letter
 11 memorializing the April 23 conference and outlining ongoing deficiencies and missing logs on
 12 June 25, 2018. A true and correct copy of that letter is attached to this Declaration as Exhibit 7.
 13 The letter also included extensive explanation of Plaintiffs’ crime-fraud exception argument. After
 14 that letter, I and my co-counsel spoke with Mr. Lee via telephone on July 11, 2018. During that
 15 call, Mr. Lee indicated that Yahoo would provide the remainder of its amended logs the week of
 16 July 16, 2018. Yahoo served the Third Amended Log.

17 12. On July 27, 2018, Yahoo produced a Revised Third Amended Log, a Fourth
 18 Amended Log, and a Fifth Amended Log. The Revised Third Amended Log contains 1,374 entries,
 19 which is an addition of 3 new documents that had previously not been listed. Yahoo also produced
 20 174 entries off of the Revised Third Amended Log, and revised 512 entries. The Fourth Amended
 21 Log contained 16,719 entries. 75 of those entries were for documents produced by Yahoo, and
 22 Yahoo also revised 1,617 entries. The Fifth Amended Log contained 1,749 entries, having added
 23 one new document to the previous Fifth Log, produced 27 entries, and revised 969 entries. That
 24 means that, collectively, according to Plaintiffs’ calculations, over the course of the last nine
 25 months, Yahoo has revised the descriptions of 3,273 entries and produced 276 documents, of
 26 approximately 77,000 entries.

27 13. As part of the larger litigation, Plaintiffs have also served multiple sets of document
 28 requests. Initially, Plaintiffs served Plaintiffs’ First Set of Requests for Production of Documents

1 to Defendants on May 23, 2017. Within those requests, Request No. 47 asks for all “Documents
2 that Yahoo provided to any governmental agency, regulatory agency, law enforcement agency, or
3 advisory council, whether in the United States, Europe, or elsewhere, concerning the Data
4 Breaches.” As part of the meet and confer process, and in the letters between Mr. Lee and I, the
5 parties agreed that this request would be interpreted as including all documents provided as part
6 of the SEC investigations done related to the data breaches that are the subject of the instant
7 litigation. As a result, all 4,326 of the entries with the description “Non-Responsive Privileged
8 Family Member” on Yahoo’s First Amended Revised, Second, and Fourth Amended Logs are
9 responsive to the SEC requests concerning the Data Breaches.

10 I declare under penalty of perjury under the laws of the United States that the foregoing is
11 true and correct.

12 Executed this 15th day of August, 2018, in Minneapolis, Minnesota.

13 *s/ Karen H. Riebel*
14 Karen Hanson Riebel

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